

THE HOUSE I AM RENTING IS BEING FORECLOSED

What Is A Foreclosure?

If your landlord does not pay his mortgage, the mortgage company may file a foreclosure. A foreclosure is a lawsuit filed by the mortgage company when the landlord does not pay the mortgage. In the foreclosure, the mortgage company asks the court to sell the property to pay off the mortgage.

I Am Only A Tenant - Why Am I Being Served?

If a foreclosure is filed against your landlord, as a tenant living in the property, you will usually be served with the foreclosure lawsuit. Either the Sheriff or a process server will hand you a copy of the lawsuit. As a tenant, you are a party to the foreclosure, but the foreclosure complaint will refer to you as the "unknown tenant" or "John/Jane Doe."

What Should I Do If I Am Served With Notice of A Foreclosure Against My Landlord?

Even though you do not own the property, you should file an Answer to the foreclosure. For more information about how to do this, see LSGMI's "How to File an Answer to a Lawsuit" brochure. In the Answer explain that:

- * You live in the property and are paying rent.
- * If you have a lease, say this in your Answer and explain when it expires.
- * Attach a copy of the lease to the Answer.

If you file an Answer, it will tell the judge and the mortgage company that a tenant is living in the property. You will also be notified if any hearings are scheduled in the case. If you do not file an Answer, you may not receive any notices about the foreclosure lawsuit, and you will not know what is happening in the case.

If the landlord did not pay the mortgage and you want to move out, you can send a letter to the landlord explaining that you are terminating your rental agreement in 7 days because he did not pay the mortgage. You may also have other claims against the landlord, but you should consult an attorney before you take any legal action.

Do I Have Any Special Rights If I Once Owned the Property Where I Am Living?

If you are living in a home that you used to own **and** you have the option of repurchasing the property, it is important that you write this in the Answer. You should also talk to your own attorney because the law in this situation is complicated.

What Should I Do If My Landlord Tells Me She Plans to Stop The Foreclosure?

If you receive a foreclosure complaint, you should contact your landlord to find out what he intends to do about the foreclosure. Sometimes, after a foreclosure is filed, the owner pays the mortgage company enough money to stop the foreclosure or files bankruptcy. If the landlord does this, the foreclosure should stop or be dismissed. Even if your landlord tells you he will stop the foreclosure, you should still file an Answer in the foreclosure lawsuit.

What Should I Do If My Landlord Tells Me He Cannot Stop the Foreclosure?

If your landlord tells you that he is not going to be able to stop the foreclosure, or if you cannot find your landlord, you should file an Answer in the foreclosure and begin looking for a new place to live. Legally, you must continue to pay rent to your landlord during the foreclosure process. You should try to negotiate a new agreement with your landlord once a foreclosure is filed. If your landlord is not accepting your rent, you should save your rent in case an eviction is filed against you.

What Happens if the Mortgage is Foreclosed?

If your landlord does not stop the foreclosure, the Court will enter judgment against the landlord. The Court will schedule a foreclosure sale. Once the property is sold at the foreclosure sale, there will be a new owner of the property.

Can the New Owner Force Me To Move?

On May 20, 2009, President Obama signed the Protecting Tenants in Foreclosure Act. This changed the law regarding tenants in foreclosure. As with any new law, there are some questions about what the new law means. This brochure is based on our reading of the new law and could change once judges rule on the new law.

If your lease has expired or you don't have a lease, the new owner must give you 90 days written Notice to Vacate. If you have a lease, the new owner must allow you to stay until the end of the lease before you can be evicted. Even if you have a lease, the landlord can make you move sooner if the landlord wants to live in the property. But, he must still give you a 90 day Notice to Vacate.

If you have a Section 8 housing voucher, the new owner must accept the Section 8 voucher and it will continue to be paid by the Housing Authority.

If the Notice to Vacate expires and you have not moved out, we believe the new owner must file an eviction to have you removed, just as any other landlord would do. Even though we interpret the new law to require the owner to file a separate eviction action, there are no decisions on this yet. Therefore, the new owner may ask the foreclosure judge for a Writ of Possession without filing an eviction. The Writ of Possession is an order telling the Sheriff to remove you and your belongings from the property. If you are still living in the property and the new owner schedules a hearing asking for a Writ of Possession, it is very important that you attend the hearing so you can tell the Judge that you are a tenant living in the property and the new owner must file an eviction case.

After the Property is Sold to A New Owner, Must I Pay Rent to the Old Landlord?

No, but you will need to pay rent to the new owner. After the property is sold at the foreclosure sale, you don't need to pay rent to the old landlord. But, after the foreclosure sale the new owner steps into the role of your previous landlord and you will have to pay rent to the new owner. It is very important that you ask for proof of ownership.

What Should I Do If the New Owner Asks Me If I Want To Stay?

Sometimes, the new owner will ask you if you want to keep living in the property. If this happens, you must make sure that the person who contacts you is really the new owner. You should ask for proof that he is the new owner before you pay him any rent. You should get any agreement in writing. If you cannot reach an agreement, the new owner cannot force you out by changing the locks or turning off the utilities.

This flyer was prepared by Legal Services of Greater Miami, Inc. (www.lsgmi.org) with support from the Institute for Foreclosure Legal Assistance. We are located at:

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